

Qi (Migration) [2019] AATA 4133 (5 September 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Ms Haosheng Qi

CASE NUMBER: 1720738

DIBP REFERENCE(S): CLF2014/19878 CLF2017/60731

MEMBER: Helena Claringbold

DATE: 5 September 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

STATEMENT MADE ON 05 SEPTEMBER 2019 AT 2:50PM

1. CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – not in genuine and continuing relationship – no evidence of joint ownership of major assets, pooled financial resources or legal obligations – unable to provide details about addresses parties claimed to have lived at together – inconsistent evidence – fabricated evidence – credibility issues – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), s 359AA

Migration Regulations 1994 (Cth), rr 1.09A, 1.15, Schedule 2, cl 801.221

CASES

He v MIBP (2017) FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. On 7 February 2014, Ms Haosheng Qi, the applicant, applied for a Partner (Residence) (Class BS) visa. The application was based on her spousal relationship with Mr Bojian Li, the sponsor.
3. On 28 August 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the visa. The delegate was not satisfied that the visa applicant and the sponsor are genuine and continuing spousal partners. Therefore, the visa applicant did not meet 801.221 of Schedule 2 to the Migration Regulations 1994 (the Regulations) made under the *Migration Act 1958* (the Act). On 5 July 2019, the applicant provided the Tribunal with a copy of the delegate's decision record. This is a review of the delegate's decision.
4. On 22 July 2019, the applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and witnesses. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant was represented in relation to the review by her registered migration agent.
5. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
6. The parties provided inconsistent evidence to the Tribunal; they contradicted their evidence, and fabricated their evidence to the Tribunal. The parties have not satisfied the Tribunal that they are credible.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The Tribunal has taken into consideration, individually and as a whole, all the evidence in the Department of Immigration and Border Protection's (the Department's) case files and the Tribunal's case file and the evidence at the Tribunal hearing.

8. ISSUE

9. The issue in this matter is whether the applicant is the spouse of the sponsor as defined in s.5F of the Act.

10. BACKGROUND ON THE EVIDENCE

11. The applicant was born in 1989 in Beijing, China. She is an only child and her parents live in China. In November 2012, the applicant entered Australia as the holder of a student visa. On 27 March 2015, she was granted a subclass 820 partner visa based on her spousal relationship with the sponsor. The applicant has declared no previous marriage or de facto relationship.
12. The sponsor was born in 1991 in Shanghai China. His father lives in Australia and his mother lives in China. He travelled to Australia to live with his father. He is an Australian permanent resident. The sponsor has declared no previous marriage or de facto relationship.
13. The parties met in July 2013 at a mutual friend's party. On 19 January 2014, the parties married in Sydney.

14. **Are the parties validly married?**

15. At the time the visa application was made, the applicant provided evidence of her marriage to the sponsor. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the parties in a spouse or de facto relationship?

16. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian permanent resident and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
17. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d).
18. In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* (2017) FCAFC 206.
19. **Regarding the financial aspect of the parties' relationship**, there is no evidence that the parties have any joint ownership of real estate or other major assets or other than their joint bank account have any joint liabilities, or pool their financial resources especially in relation to major financial commitments or other than their joint bank account owe any legal obligation in respect of each other. The applicant's bank statements April 2015 to December 2015 record various withdrawals and deposits including amounts of \$20,000, \$35,000, \$20,000, \$19,983, \$23,014.04, \$5,000, \$20,032.91 and \$2,982 which are without identification. The applicant told the Tribunal that these deposits were made by her parents. She stated that the sponsor deposited \$10,000 but she didn't remember when the deposit was made. The sponsor stated that he transferred amounts of \$2,000 to the applicant and noted them as 'for my baby'. The visa applicant's bank statements for 2018 and 2019 recorded various deposits with the notation of either 'Li Bo Jian for my babr' or 'Li Bo Jian for my babe'. The applicant's migration agent in a post hearing submission stated that these payments were made by the sponsor to the applicant for the Homebush property and that they evidence pooling of finances. There is no other identifiable information recorded against these transactions, while other deposits are recorded as being from the applicant. Ad hoc joint bank statements for 2017 and 2018 record various cash deposits and debits. Other deposits include one for \$48,850, which the applicant told the Tribunal was a refund for a deposit for an off the plan property, in the parties' names, that didn't go through. She provided a copy of a contract for sale of land/property for an Ann Street, Merrylands address dated December 2014 in joint names. Other multiple deposits from 'Min Zheng' were notated as 'rent'. Bank statements dated 2018 and 2019, record an investment loan with a balance of \$376,716.76 in the applicant's name.

20. In April 2019 the applicant stated the following: the parties have a joint bank account which is seldom used. The sponsor is paid in cash and she uses cash in China. At other times the sponsor gives her cash when he is in Australia or remits cash to her and remits money 'to our mortgage account every month to repay the home loan' and her father-in-law would also give her cash. In 2017 she worked as a beautician and also earned money by 'purchasing on behalf of others'. She stated that the sponsor normally pays for daily expenses and the parties normally pay in cash. She stated that the sponsor has a property and mortgage loan in her name and the sponsor contributes to the mortgage payments. She told the Tribunal that the joint bank account is used to purchase items from the supermarket and to buy clothes.
21. The parties provided inconsistent information about the financial aspects of their relationship and this is discussed below.
22. The Tribunal put information to the applicant under s.359AA of the Act as follows:
- The sponsor told the Tribunal that before 2016 he purchased real estate property in Fairfield with the help of his father. The full purchase price is \$650,000 however the property and mortgage are not settled but he and his father will complete the purchase. This information was put to the applicant as it was inconsistent with her evidence that the sponsor's father purchased a Fairfield property for the sponsor, last year or two years ago and it will be settled this year. The sponsor's father has taken a mortgage loan of \$480,000 for the property.
23. The applicant's migration agent in a post hearing submission stated the following: In 2017 the sponsor's father offered the sponsor money to purchase an off the plan apartment in Fairfield. The developer didn't allow the sale of the property to the sponsor and the Fairfield property was not purchased by the sponsor. The sponsor and the applicant both gave incorrect information about the Fairfield property due to nerves. There seems to be confusion in respect of the mortgage of the sponsor's father's Bass Hill property. The mortgage was \$488,000 and the purchase price in 2016 was \$650,000. The migration agent provided one page of a home loan contract showing a credit amount of \$488,000 with a disclosure date of 22 September 2016 and an offer lapse date of 22 October 2016. This recorded the sponsor's father's name and an address of King Georges Road, Beverley Hills. He also provided a real estate property report for an Orchard Road Bass Hill address. This recorded that a sale took place of the property on 13 September 2016 for a sale price of \$640,000. Also provided is a council rates notice dated July 2019 for a Chester Hill Road, Bass Hill address. The migration agent stated that the Chester Hill Road address is also known as the Orchard Road address and this address and the King Georges Road address is where the sponsor's father lived.
24. The Tribunal does not accept this explanation. The Tribunal is of the view that the sponsor and the applicant fabricated their evidence to the Tribunal. It considers it reasonable even if the applicant and the sponsor were nervous they should be able to provide consistent information about their financial matters. Instead the sponsor told the Tribunal that he purchased a Fairfield property with his father that was not settled but he and his father would complete the purchase and the applicant stated that the Fairfield property was purchased for the sponsor by his father and it would be settled this year. However, the evidence post Tribunal hearing is that this information is incorrect and the Fairfield property was not purchased. The Tribunal does not find either the sponsor or the applicant to be credible.
25. The Tribunal accepts the following: that the parties have a joint bank account; in 2014 the parties' signed a contract with the intention to purchase land/property at an Ann Street, Merrylands address and that sale fell through; that a cheque for \$48,850 was deposited into the applicant's bank account in November 2018. While the joint bank statements record

various debits and credits, they provide little insight into the pooling of financial resources or who actually uses the joint bank account. Although the parties claim that the sponsor assists in the repayments for the mortgage loan held by the applicant, the claim is unsubstantiated by independent information and no independent evidence has been provided to substantiate that the deposits with the notation 'Li Bo Jian for my babr' or 'Li Bo Jian for my babe' are actually from the sponsor. As a result the Tribunal does not accept that the sponsor deposited money in to the applicant's bank account as claimed and does not accept that the sponsor supports the applicant financially. On one hand, the sponsor gave evidence that the property was purchased with the assistance of his father and the mortgage loan had not been settled. On the other hand, the applicant gave evidence that the sponsor's father purchased a property for the sponsor including taking a considerable loan to settle the property. However, after the Tribunal hearing, the applicant's migration agent stated that, the sponsor and the applicant provided incorrect information about the sponsor's father either assisting to purchase or purchasing a property for the sponsor. The evidence that the parties manage the financial aspects of their relationship by using cash is without independent evidence. The Tribunal does not accept that the parties share day-to-day household expenses because there is little evidence to support this.

26. **Regarding the nature of the parties' household**, there is no evidence that the parties have any joint responsibility for the care and support of children. Since their marriage in January 2014, the sponsor lived outside of Australia for over two years and the applicant has been outside of Australia for approximately eight months. The applicant and sponsor provided written information as follows: because of the sponsor's concern for his mother he travelled to Shanghai on 20 May 2015. The applicant did not travel as the parties thought that she was required to remain in Australia until she was granted permanent residency. The sponsor's mother was diagnosed with vertigo, palpitations and anxiety. On 10 November 2015 the sponsor returned to Australia and discussed with the applicant him remaining in Shanghai for a longer time to set up an internet café. Although reluctant to be apart, on 4 December 2015, the sponsor returned to China and the parties supported each other in their decision. During the time the sponsor was in China the applicant studied English. On 31 December 2015, the applicant joined the sponsor in China to celebrate Chinese New Year. On 29 June 2016, the sponsor returned to Australia. He then departed Australia on 13 November 2016. Although the sponsor had spent a large amount of time in China since the visa application was lodged, the parties' separate living arrangements were temporary and they remained in contact during the time they were separated and the applicant travelled to be with the sponsor during his time in China. On 4 July 2017 the sponsor worked in Beijing as an artist's assistant. The sponsor continued to travel to and from Australia.
27. In April 2019, the parties stated the following: they eat lunch separately on weekdays and the sponsor would cook dinner in the evenings and she sometimes cooks dumplings. On week ends the sponsor cooks. She also takes charge of the cleaning. They also shop together for day-to-day items but purchase their clothing individually. The applicant's mother in her statement stated that the sponsor told her that the parties were unable to live together for a long time for many reasons. However his mother's health is better, his business in Shanghai is on track and it was not necessary for him to work in Shanghai in the long term. Jingmin, a friend of the sponsor's wrote that because of the sponsor's busy schedule he spent most of his time in China in 2015 and 2016 however the parties feelings for each other remained unchanged.
28. The parties told the Tribunal that they are currently living in Park Road, Homebush (the Homebush address). The applicant provided information including a medical document dated August 2018 and ad-hoc bank statements dated 2018 and 2019 in the applicant's name and ad-hoc joint bank statements dated 2017 and 2018 in the parties' names addressed to this property. In a post Tribunal hearing submission the applicant's migration agent stated that the parties have lived at this address since around February 2017.

29. The parties told the Tribunal that they also lived at a Kogarah address. The applicant provided a medical certificate dated August 2016 in the applicant's name addressed to this property. In a post Tribunal hearing submission the applicant's migration agent stated that the parties lived here from around February 2016 and this was the last shared house they lived in. Minghui, a friend of the applicant, in a statutory declarations dated December 2016 and August 2019, stated that she drove the parties from this address several times to buy furniture. Xiaoli, another friend of the parties, in a statutory declaration stated that she helped the parties move from this address to Homebush. In a post Tribunal hearing submission the applicant's migration agent stated that the parties lived here from around February 2016.
30. The parties told the Tribunal that they also lived at a Strathfield address. The applicant provided a bank statement for October 2015-December 2015 and a medical letter addressed to the applicant, ad hoc greeting cards and a police clearance dated November 2015 addressed to this property. In a post Tribunal hearing submission the applicant's migration agent stated that the applicant lived here from around March 2015 to February 2016.
31. The parties told the Tribunal that they also lived at a Chatswood address no information has been provided for this address. They also stated that they lived at a Beverley Hills address. The applicant provided ATO assessment notices dated 2011 and 2013 addressed to the sponsor, a joint bank statement addressed and a jewellery receipt dated January 2014 addressed to this property. In a post Tribunal hearing submission the applicant's migration agent stated that this is the sponsor's father's address which he sold in February 2018. The migration agent provided a report recording that the Beverley Hills address was sold in February 2016 and settled in June 2016.
32. The Tribunal asked the applicant to provide details of the residential addresses where the parties claim they lived. She was unable to provide any details other than the suburb for any of the addresses, other than the Homebush address, where the parties claim to currently live. The Tribunal asked the sponsor to provide details about the address. He was unable to provide any details about the addresses, other than the Homebush address and his father's Beverley Hills address. The sponsor was unable to provide any details about the other addresses.
33. The applicant also provided information about a Brown Street Ashfield address. She provided a copy of a residential tenancy agreement starting on 6 December 2014 and ending on 15 January 2016 recording the applicant as the tenant and bank statements from April to June 2015 and from August to October 2015 in the applicant's name. She also provided a contract for sale of land document dated December 2014 in the parties' names. The parties told the Tribunal that they didn't live at this address. This is discussed in this decision record.
34. The applicant's migration agent in a post Tribunal hearing submission stated the following: the sponsor and the applicant were not the only ones living at the relevant addresses (other than the Brown Street address). They lived in shared accommodation and paid rent and expenses to the other occupants and didn't have the primary responsibility for payment of rent and expenses. He stated that the parties stated that they lived near a train station and he provided a google maps printout for the Beverley Hills address, the chatswood address, the Strathfield address and the Kogarah address showing the parties' claimed residential addresses and the train stations.
35. The Tribunal put information to the applicant under s.359AA of the Act as follows:
 - A report on the Department's file CLF2017/60731 dated 21 December 2016, from an external agency recorded residential addresses for the sponsor as at 1 July 2016, as 29 Josephine Street, Riverwood and as at 5 September 2016 to at least 21

December 2016, as 7-379 King Georges Road, Beverley Hills. These addresses have not been provided at any time as residential addresses for the applicant or the sponsor as part of the visa application and review. The Tribunal also told the applicant of its concerns about the parties' inability to provide details about the addresses they claimed to have lived at together.

36. The sponsor told the Tribunal that his father lived at the Beverley Hills address for ten years before moving to a Bass Hill address where he lived for two years. After the Tribunal discussed with him the addresses in the external agency report he stated that his father rented these places temporarily. He stated that he and his father did construction work together and letters were sent to these properties.
37. The applicant responded at the Tribunal hearing and stated that when the sponsor's father moved from the Beverley Hills address he lived at these addresses. She said that the sponsor and his father worked together in the renovation industry and the sponsor's letters were sent to his father's addresses. In a post Tribunal hearing submission the applicant's migration agent stated that because the sponsor and the applicant lived in shared accommodation and moved frequently and the sponsor worked with his father the parties decided to use the sponsor's father's address.
38. The Tribunal does not accept this argument. The applicant's evidence is that the sponsor returned to Australia in June 2016 and departed in November 2016. The Tribunal is perplexed why the sponsor, in July 2016 and from September 2016 to at least December 2016, more than two years after the parties married and claim to have lived together, recorded different residential addresses with an external agency to the residential addresses where the parties claimed to live together. The Tribunal has not been provided any independent information to support that the sponsor did not live at these addresses.
39. The Tribunal put information to the applicant under s.359AA of the Act as follows:
 - The sponsor told the Tribunal that bank statements dated April 2015 to June 2015 addressed to the applicant at a Brown Street, Ashfield address related to the first place she lived when she came to Australia. He then said 'no, she was living with me at that time'. He then continued to give inconsistent information stating that the applicant lived at this address and didn't live at this address. He told the Tribunal that the information being discussed about this address 'could be a trap'. This information was put to the applicant as it was inconsistent with her evidence that she rented the Brown Street Ashfield address for a friend because her 'qualifications were not up to scratch'. She said that the real estate agent needed to see bank statements and before renting the place she printed the bank statements and showed the agent and the qualifications were proven. She then stated that she was the one who rented the property and that's why the bank statements were posted to this address. She claimed that the sponsor was not supportive of her helping this friend and didn't know about the rental property.
40. The applicant's migration agent in a post Tribunal hearing submission stated the following: the parties did not live at this address. The applicant was party to a residential agreement and sublet the property to her friend. She didn't tell the sponsor as she thought he would not approve. The applicant's friend was asked to give a statement to the Tribunal to support the applicant's statement but refused to do so. A copy of an online chat between the applicant and the friend has been provided to the Tribunal. The migration agent continued and stated that this was the address that appeared on bank statements and on the contract for sale of land. The sale did not proceed because of an error by made by the acting lawyers who also in error recorded this address on the contract of sale.

41. The Tribunal told the applicant and the sponsor that in discussing the Brown Street, Ashfield address it was testing the evidence before it. The Tribunal does not consider the sponsor's comment about the information about the Brown Street Ashfield address 'could be a trap' in any adverse way. However, the Tribunal is concerned about the sponsor's credibility because he fabricated evidence stating that the applicant lived at this address and then continually changed his evidence. The Tribunal considered the information provided by the applicant about the residential addresses where the parties claim to have lived together. Although the parties claim to have lived together since January 2014, there is little independent evidence to support the claims. They were unable to provide details about many of the residential addresses they claimed to have lived at together. During the time the parties claimed to live together, the sponsor provided other residential addresses to an external agency not provided by the parties as their residential addresses. Although the parties gave evidence about them, sharing the responsibility for housework, the Tribunal does not accept that the parties shared living arrangements as they claimed and does not accept that the parties shared the responsibility for housework.
42. **Regarding the social aspects of the parties' relationship**, in April 2019, the applicant stated the following: when in China the parties would go to see friends, play cards visit the zoo or the Bund and enjoy the scenery in Shanghai or go for a walk. In Australia they go to the movies or walk across the bridge at Rhodes NSW. She told the Tribunal that in 2018, the parties went to the zoo and participated in games in private homes and enjoyed playing video games and Mahjong with friends and attended a wedding ceremony together. In third party statements from 2014 and 2015: the sponsor's father stated that he agreed to the parties marriage and had known the applicant for four years. He claimed that the parties telephoned him a couple of times a week and would visit him and they would have dinner together. He believed that the parties loved each other. He looks forward to grandchildren in the future. Min who is the mother of the applicant's friend stated, that her daughter and the applicant were in the same class and she has known the applicant for three years and the sponsor for two years. She spoke with the parties about their relationship and they expressed their love for each other. They celebrate dinner and special occasions together. She knows that the parties plan to have a baby together and wishes them happiness. Qi had known the applicant for eight months and the sponsor for three months. She worked with the applicant. She stated that the parties plan to have two children, start a business and buy a house. Suxian a friend of the applicant's, stated that she socialised with the parties and believed their relationship to be genuine.
43. In third party statements: in August 2019, Minghui stated the following: she has known the applicant since 2013 and the sponsor since the parties marriage and drove the parties to purchase furniture. Xiaoli stated that she met the applicant in 2015 and was introduced to the sponsor. In April 2019: the sponsor's mother stated that she chats with the applicant via video. Due to her health the sponsor cared for her for six months in 2015. The sponsor told her he wanted to open an internet café and remained in Shanghai and later assisted a friend in Beijing. Due to her health and the sponsor's work the parties have been separated, this is not uncommon in China. She believes the parties relationship to be genuine. The sponsor's father stated that the sponsor was in China to further his career. However during the sponsor's time in China the parties spend each New Year together, except for 2017 when the applicant was with him. During the sponsor's absence the applicant visited her father-in-law and he approves of the parties' marriage. The applicant's mother stated that they didn't object to the parties' marriage. However because of the parties' busy lifestyle in Australia they decided to 'skip the wedding ceremony in China'. She wrote of the sponsor taking care of his mother and of the parties' travels to and from China. She describes the sponsor starting an internet café and of working in Beijing. She stated that in October 2017, the applicant's grandfather died and the sponsor joined the family for the funeral. Minghui, who is a friend of the applicant, stated that the parties participated in social activities and assist

her in installing beds she has purchased from China. She held concerns about the parties' long distance relationship, the parties remained in contact and she/he was convinced that the parties' relationship is genuine. Minghui, told the Tribunal that she has witnessed the parties journey and believed the parties relationship to be genuine and continuing. Her view is that the parties living separately for a term, is not an issue because it was to provide a better future for them. Xueying, a friend of the applicant's, stated that after the parties married she and the parties visited Tiananmen Square together and had dinner at the applicant's parent's home. She wrote of the parties exchanging gifts and of quarrelling with each other. She stated that the applicant was unhappy about the sponsor working in Beijing and the parties quarrelled. She understands that the sponsor has opened an internet café and works hard for his family. Jingmin, a friend of the sponsor's wrote that he attended the parties' wedding and they then went to a Chinese restaurant to celebrate. He spent time with the parties socially. He stated that the parties' relationship is genuine. Jingmin, told the Tribunal that he has known the sponsor for a long time. He met the applicant in 2013 and attended the parties' wedding and sees the parties once or twice a month. Danqing, a friend of the sponsor, stated that the parties would go to his home and play Mahjong with him and his girlfriend. They would order take away and at other times had week ends together outdoors. He believes the parties will be happy in the future. Danqing told the Tribunal that the parties have been together for a long time. Photographic evidence depicts the parties together and with others at different locations. Other photographs depicts the parties on their wedding day together and with others. The Tribunal accepts that the parties represent themselves to other people as being married to each other and are seen by others as being married to each other and that they plan and undertake joint social activities together. While the Tribunal accepts that the witnesses at the Tribunal hearing and the authors of the third party statements believe the parties' relationship to be genuine, the Tribunal is of the view that these statements do not outweigh the inconsistent information the parties provided to the Tribunal. This inconsistent information led the Tribunal to have significant concerns about the parties' credibility and this is discussed in this decision record.

44. **Regarding the nature of the parties commitment to each other**, the parties met in 2013 and married on 19 January 2014. Since their marriage the sponsor lived outside of Australia for approximately two years and four months and the applicant has been outside of Australia for approximately eight months. During their separation the parties claim that the sponsor returned to Australia several times and the applicant travelled to China to be with the sponsor. In April 2019 the applicant stated that the parties believed that a brief separation for the sake of the family and a better future should not be regarded as a serious matter. In April 2019, the parties stated the following: in 2018 the parties decided to have a baby. They consulted a specialist and were told that the applicant's medication for epilepsy would not affect the baby and the applicant could have a baby when she is in good health. The sponsor stated the following: the applicant takes care of him. If the visa is not granted he will return to China with the applicant. However the parties have always wanted to have their children live and study in Australia and for them to live as a family in Australia. The applicant's mother wrote in April 2019, that the applicant was considering having a baby and she would she care for the child in Australia. The applicant told the Tribunal that the parties separation was short and they didn't have any other option.
45. The Tribunal put information to the applicant under s.359AA of the Act as follows:
 - A report on the Department's file CLF2017/60731 dated 21 December 2016, from an external agency recorded the sponsor's relationship status as not partnered.
46. The applicant responded at the Tribunal hearing and stated that the sponsor received a Centrelink benefit prior to the parties' marriage and he didn't change his status and she didn't request that he change it.

- In May 2019, the sponsor wrote that after he married he omitted to change his status with Centrelink. On 26 April 2019 the parties attended a Centrelink office and provided a completed form to change his status and the staff confirmed that the information had been updated. However the applicant's migration agent realised the records still showed the applicant as not partnered. The sponsor returned to the Centrelink office and staff refused to provide him with an updated copy of his records stating they had been posted to his address and he was still waiting for a record of the updated information. He provided two 'Centrelink Customer Record' printed on 26 April 2019 both recording the sponsor as not partnered.

47. The Tribunal considered that the parties have been married for more than five years. In that time the sponsor provided an external agency different residential addresses to those the parties claimed to live at together. His residential addresses are recorded starting on 1 July 2016, to be Josephine Street Rvierwood and starting on 5 September 2016 to be King Georges Road, Beverley Hills. Yet he failed to change his relationship status and continued to be recorded as not partnered or single with the agency up until at least 26 April 2019. When consistent information is provided about aspects of a relationship, the Tribunal is provided with insight into the degree of companionship and support the parties draw from each other and whether the parties see their relationship as long term. In this case, the parties provided inconsistent information about their financial matters. They were unable to provide details of the residential addresses they claimed to have lived at together. During the time the parties claimed to live together, the sponsor gave two different residential address to an external agency and bank statements for the applicant were addressed to her at another different residential property. The Tribunal accepts that the parties have been married since January 2014. Notwithstanding, the evidence provided about the parties relationship, the Tribunal does not accept that they have lived together as they claimed or that they provide each other with companionship and support or that they see their relationship as long term.

48. **Other considerations**

49. With regard to the s.359AA information put to the applicant at the Tribunal hearing, the applicant was told that the information would be the reason or part of the reason for affirming the decision. The applicant was told the relevance of the information and the consequence of the information. She was invited to comment on or respond to the information and told that she could comment on or respond to the information orally or in writing and that she could seek additional time to comment on or respond to the information. The applicant responded to some of these matters at the Tribunal hearing. She also requested and was granted additional time to respond to other information and to provide information about the parties relationship. The applicant was also granted an extension of time to provide her response and information.
50. In the response to the Tribunal hearing sent to the Tribunal, the applicant listed several witnesses. However on the day of the Tribunal hearing did not list some of those witnesses to give evidence to the Tribunal. Neither, the applicant or the representative told the Tribunal that they wanted the Tribunal to take evidence from any other witnesses other than those attending the Tribunal hearing. However, the Tribunal notes that the applicant was provided additional time to provide information about the parties' relationship.
51. On 4 July 2019, the Tribunal wrote to the applicant and invited her to a Tribunal hearing on 22 July 2019. On 15 February 2019 and 4 July 2019, the applicant was advised of the following: In assessing his matter the Tribunal must consider either regulation 1.09A (de facto relationship) or Regulation 1.15A (spouse relationship) of the Migration Regulations. Regulations 1.09A and Regulation 1.15A provide that the Tribunal considers all the circumstances of the parties' relationship including the financial aspects of the relationship;

the nature of the household; the social aspects of the relationship and the nature of the parties' commitment to each other. The applicant was provided with a guide to the type of information that may be provided and told that it was not a definitive list.

52. On 4 July 2019, the applicant's representative advised that the applicant was in China caring for her grandmother. He sought postponement of the Tribunal hearing scheduled for 22 July 2019. He stated 'It is anticipated that further evidence and written submissions will be presented to the Tribunal prior to the hearing. Comprehensive instructions can only be obtained upon the return of my client, in person. Accordingly, I am instructed to request on behalf of my client for the hearing date to be postponed for 4 weeks.'
53. On 4 July 2019 the Tribunal wrote to the applicant's representative and stated the Tribunal hearing scheduled for 22 July 2019 would proceed as scheduled. He was advised that the applicant had had almost two years, since the time of the lodgement for review, to provide information to the Tribunal. He was advised that, the Tribunal had extended time for information to be provided in support of the review on 26 March 2019, 9 April 2019 and 1 May 2019.
54. About the applicant's health, in letters dated March 2019, a general practitioner stated that the applicant has been a patient of his surgery and suffers from epilepsy. Another letter from St George Hospital, recorded that the applicant was neurologically normal on assessment. MRI was unremarkable and EEG showed epileptiform activity. In a letter dated August 2018, a consultant neurologist stated the following: the applicant is a physiotherapist who suffered her first seizure at 16 and in 2015 had another seizure and presented to St George Hospital. She has not had any further seizures until April 2018, is not pregnant and does not drive. He referred the applicant for tests. Other letters dated 2015, recorded that the applicant was prescribed medication for the management of epilepsy. The Tribunal accepts that the applicant has the medical conditions as claimed.
55. This decision record is a synopsis of the information before the Tribunal. The Tribunal considered all the aspects of the parties' relationship including the financial and social aspects, the nature of the parties' household and the nature of the parties' commitment to each other. It has considered the evidence individually and as a whole. The Tribunal finds that the parties know each other personally, have socialised in China and Australia and have communicated with each other. However, the Tribunal is not satisfied that the parties are in a genuine spousal relationship.
56. The Tribunal considered all the evidence individually and as a whole including the Department and Tribunal files and the evidence pre-and post-hearing and at the Tribunal hearing. Given the inconsistent evidence and credibility concerns, the Tribunal, is not prepared to accept the parties' evidence about their commitment to the relationship. The parties have not satisfied the Tribunal that at the time of this decision the parties have a mutual commitment to a shared life to the exclusion of all others, that they have a genuine and continuing relationship; or that they live together and not separately and apart on a permanent basis.
57. Given these findings the Tribunal **is not** satisfied that the requirements of s.5F(2) are met at the time of this decision. Therefore the applicant **does not meet** cl.801.221(2)(c) of Schedule 2 to the Regulations.
58. Furthermore, the applicant has not claimed, and there is no evidence before the Tribunal, that the applicant meets any of the the alternative criteria for the grant of the visa.
59. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

60. The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Helena Claringbold
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).